

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO.:

RAUL GONZALEZ,

Plaintiff,

vs.

TROPICAL CHEVROLET, INC.,

Defendant.

\_\_\_\_\_ /

**COMPLAINT**

Plaintiff, RAUL GONZALEZ (“Plaintiff”), by and through the undersigned counsel, and hereby sues Defendant, TROPICAL CHEVROLET, INC. (“Defendant”), and alleges as follows:

1. This is an action for declaratory and injunctive relief and damages pursuant to The Family Medical Leave Act (FMLA), the American with Disabilities Act ("ADA"); The Florida Minimum Wage Act (FMWA); and The Fair Labor Standards Act (FLSA), to redress injuries resulting from Defendant’s unlawful race-based and disability-based discriminatory treatment of Plaintiff.
2. At all times material hereto, Plaintiff was a resident of Miami-Dade County, Florida.
3. Defendant is a Florida Profit Corporation authorized to conduct business in the State of Florida, where Plaintiff worked for Defendant.
4. Venue is proper because the employment practices hereafter alleged to be unlawful were committed within the jurisdiction of this Court.

**FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

5. Plaintiff is a disabled individual who was diagnosed with cancer, and within a class of individuals protected by the ADA.

6. Plaintiff started working at Tropical Chevrolet Inc., on September 27, 2020, as a car wash attendant.

7. In July of 2021, he went to see a doctor to check one of his shoulders due to severe pain.

8. That day the doctor recommended seeing a specialist due to a lump that he had in his shoulder.

9. After seeing the specialist, the Plaintiff was scheduled for surgery, and the lump had to be tested for possible cancer.

10. Immediately, he informed his immediate supervisor, Mr. Julio, regarding his surgery.

11. On August 27, 2021, Mr. Julio called Plaintiff to come to the dealership to cover some shifts.

12. Plaintiff told him that he could not go because, as previously informed, he had his surgery scheduled for August 30, 2021, and under the doctor's recommendation, he needed to be rested.

13. Plaintiff underwent surgery on August 30, 2021.

14. The next day, on Tuesday, August 31, 2021, Plaintiff sent all his medical paperwork to his manager, Mr. Julio.

15. He also informed Mr. Julio that he would have a follow-up appointment on September 9, 2021.

16. On that date, the doctor's diagnosis was cancer, and Plaintiff was recommended to have a second surgery to remove any malignant cells that might remain in the affected area.

17. The doctor indicated some work restrictions, such as no manual labor until the second surgery was to occur.

18. Once again, Plaintiff sent the pertinent medical paperwork to Mr. Julio.

19. Eventually, on September 20, 2021, Plaintiff was terminated.

20. At that moment, Plaintiff asked for a reason, and the response delivered to him was, "we did not have to give you any reason to fire you."

21. Plaintiff was wrongfully terminated based on his disability which was cancer.

22. Plaintiff timely filed a Charge of Discrimination alleging discrimination on the basis of race, disability, and retaliation, with the Equal Employment Opportunity Commission, and the Florida Commission on Human Relations.

23. Plaintiff received a right-to-sue notice from the EEOC fewer than ninety days preceding the filing of this Complaint. As such, all conditions precedent, including the exhaustion of administrative remedies, have been met.

24. Throughout Plaintiff's employment, Plaintiff was able to perform the essential functions of his job duties and responsibilities, and at all relevant times he did perform his job at satisfactory or above-satisfactory levels.

25. Additionally, Plaintiff was not paid the proper Florida minimum wage, nor the proper overtime as provided by law.

26. Plaintiff would be compensated by being paid \$8.00 per car washed however some days he did not wash enough cars and when taken into account the amount of hours worked the pay received fell below the applicable Florida minimum wage per hour,

27. Plaintiff also regularly worked more than 40 hours each week he worked, in fact he worked approximately 55 hours per week.

28. Plaintiff is owed overtime as he was only paid the piece rate time for all hours he worked and was never paid the overtime premium.

29. Defendant employed more than 50 employees during the dates Plaintiff was employed by Defendant

**COUNT I**

***Wage & Hour Federal Statutory Violation against TROPICAL CHEVROLET, INC..***

30. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 29 of this complaint as if set out in full herein.

31. This action is brought by Plaintiff to recover from the Defendant unpaid minimum wage and/or overtime compensation, as well as an additional amount as liquidated damages, costs, and reasonable attorney's fees under the provisions of the FLSA.

32. At all times pertinent to this Complaint, Defendant had two or more employees who regularly handled goods and/or materials which had been sold and transported from across state lines of other states, and the Defendant obtains and solicits funds from non-Florida sources, accepts funds from non-Florida sources, uses telephonic transmissions going over state lines to do its business, transmits funds outside the State of Florida, and otherwise regularly engages in interstate commerce, particularly with respect to its employees.

33. Upon information and belief, at all times material hereto, Defendant's annual gross revenue exceeded \$500,000 per annum on its own, or as part of a joint enterprise with the other corporate Defendant named herein, or which are as of yet unknown but will be revealed through further discovery. To the extent that Defendant operated as part of a joint enterprise, it did so with corporate entities that performed related activities, under the common control of the individual

Defendant, and for common business purposes related to the work performed by Plaintiff for Defendant.

34. By reason of the foregoing, the Defendant is and was, during all times hereafter mentioned, an enterprise engaged in commerce or in the production of goods for commerce as defined in §§ 3 (r) and 3(s) of the FLSA, 29 U.S.C. § 203(r) and 203(s). Defendant's business activities involve those to which the FLSA applies. The Plaintiff's work for the Defendant likewise affects interstate commerce.

35. Plaintiff seeks to recover for unpaid wages accumulated from the date of hire and/or from three (3) years from the date of the filing of this complaint.

36. Defendant knew and/or showed reckless disregard of the provisions of the FLSA concerning the payment of minimum and/or overtime wages as required by the FLSA and remain owing Plaintiff these wages since the commencement of Plaintiff's employment with Defendant as set forth above. As such, Plaintiff is entitled to recover double damages.

**WHEREFORE**, Plaintiffs respectfully pray for the following relief against Defendant:

- A. Adjudge and decree that Defendant has violated the FLSA and has done so willfully, intentionally and with reckless disregard for Plaintiff's rights;
- B. Award Plaintiffs actual damages in the amount shown to be due for unpaid wages and unpaid overtime wage compensation for hours worked in excess of forty (40) each week, with interest;
- C. Award Plaintiffs an equal amount in double damages/liquidated damages;
- D. Award Plaintiffs the costs of this action, together with a reasonable attorneys' fees; and
  - a. Grant Plaintiffs such additional relief as the Court deems just and proper under the circumstances.

**COUNT II**

***FMWA Violation against TROPICAL CHEVROLET, INC.***

37. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 29 of this complaint as if set out in full herein.

38. This action is brought by Plaintiff to recover from the Defendant unpaid minimum wage compensation, as well as an additional amount as liquidated damages, costs, and reasonable attorney's fees under the provisions of the FMWA.

39. Defendant's business activities involve those to which the FMWA applies.

40. Plaintiff is a working Floridian entitled to the protections of the FMWA.

41. At all times pertinent to this Complaint, Defendant had two or more employees who regularly handled goods and/or materials which had been sold and transported from across state lines of other states, and the Defendant obtains and solicits funds from non-Florida sources, accepts funds from non-Florida sources, uses telephonic transmissions going over state lines to do its business, transmits funds outside the State of Florida, and otherwise regularly engages in interstate commerce, particularly with respect to its employees.

42. Upon information and belief, at all times material hereto, Defendant's annual gross revenue exceeded \$500,000 per annum on its own, or as part of a joint enterprise with the other corporate Defendants named herein, or which are as of yet unknown but will be revealed through further discovery. To the extent that Defendant operated as part of a joint enterprise, it did so with corporate entities that performed related activities, under the common control of the individual Defendants, and for common business purposes related to the work performed by Plaintiff for Defendant.

43. By reason of the foregoing, the Defendant is and was, during all times hereafter mentioned, an enterprise engaged in commerce or in the production of goods for commerce as defined in §§ 3

(r) and 3(s) of the FLSA, 29 U.S.C. § 203(r) and 203(s). Defendant's business activities involve those to which the FLSA and FMWA apply. The Plaintiff's work for the Defendant likewise affects interstate commerce.

44. Plaintiff seeks to recover for unpaid minimum wages accumulated from the date of hire and/or from five (5) years from the date of the filing of this complaint. Florida's hourly minimum wage in 2010 was \$7.25; in 2011 was \$7.31; in 2012 was \$7.67; in 2013 was \$7.79; in 2014 was \$7.93; and in 2015 is \$8.05.

45. Defendant knew and/or showed reckless disregard of the provisions of the FMWA concerning the payment of minimum wages as required by the FMWA and remain owing Plaintiff these wages since the commencement of Plaintiff's employment with Defendant as set forth above. As such, Plaintiff is entitled to recover double damages.

**WHEREFORE**, Plaintiff respectfully prays for the following relief against Defendant:

- A. Adjudge and decree that Defendant has violated the FMWA and has done so willfully, intentionally and with reckless disregard for Plaintiff rights;
- B. Award Plaintiff actual damages in the amount shown to be due for unpaid minimum wages, with interest; and
- C. Award Plaintiff an equal amount in double damages/liquidated damages; and
- D. Award Plaintiff the costs of this action, together with reasonable attorneys' fees; and
  - a. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

### **COUNT III**

#### ***Disability Discrimination in Violation of the ADA***

46. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 29 of this Complaint as if set out in full herein.

47. Plaintiff is a member of a protected class under the ADA.

48. By Defendant's conduct described above, Defendant has engaged in discrimination against Plaintiff because of Plaintiff's disability and chronic conditions and subjected the Plaintiff to animosity based on his disability and chronic conditions.

49. Such discrimination was based upon the Plaintiff's disability in that Plaintiff would not have been the object of discrimination but for the fact that Plaintiff is disabled.

50. Defendant's conduct complained of herein was willful and in disregard of Plaintiff's protected rights. Defendant and its supervisory personnel were aware that discrimination on the basis of his disability was unlawful but acted in reckless disregard of the law.

51. At all times material hereto, the employees exhibiting discriminatory conduct towards Plaintiff possessed the authority to affect the terms, conditions, and privileges of Plaintiff's employment with the Defendant.

52. Defendant retained all employees who exhibited discriminatory conduct toward the Plaintiff and did so despite the knowledge of said employees engaging in discriminatory actions.

53. As a result of Defendant's actions, as alleged herein, Plaintiff has been deprived of rights, has been exposed to ridicule and embarrassment, and has suffered emotional distress and damage.

54. The conduct of Defendant, by and through the conduct of its agents, employees, and/or representatives, and the Defendant's failure to make prompt remedial action to prevent continued discrimination against the Plaintiff, deprived the Plaintiff of statutory rights under state law.

55. The actions of the Defendant and/or its agents were willful, wanton, and intentional, and with malice or reckless indifference to the Plaintiff's statutorily protected rights, thus entitling Plaintiff to damages in the form of compensatory and punitive damages pursuant to federal law, to punish the Defendant for its actions and to deter it, and others, from such action in the future.



56. Plaintiff has suffered and will continue to suffer both irreparable injury and compensable damages as a result of Defendant's discriminatory practices unless and until this Honorable Court grants relief.

WHEREFORE, Plaintiffs respectfully prays for the following relief against Defendant:

A. Adjudge and decree that Defendant has violated the ADA, and has done so willfully, intentionally, and with reckless disregard for Plaintiff's rights;

B. Enter a judgment requiring that Defendant pay Plaintiff appropriate back pay, benefits' adjustment, at amounts to be proved at trial for the unlawful employment practices described herein;

C. Enter an award against Defendant and award Plaintiff compensatory damages for mental anguish, personal suffering, and loss of enjoyment of life;

D. Require Defendant to reinstate Plaintiff to the position at the rate of pay and with the full benefits Plaintiff would have had Plaintiff not been discriminated against by

E. Defendant, or in lieu of reinstatement, award front pay;

F. Award Plaintiff the costs of this action, together with a reasonable attorney fees; and

Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

#### **COUNT IV**

##### ***Failure to Accommodate in Violation of the ADA.***

57. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1-29 above as if set out in full herein.

58. Plaintiff is a member of a protected class under the ADA.

59. By the conduct describe above, Defendants have engaged in discrimination against Plaintiff because of Plaintiff's disability and subjected the Plaintiff to disability-based animosity.

60. Such discrimination was based upon the Plaintiff's disability in that Plaintiff would not have been the object of discrimination but for the fact that Plaintiff is disabled.

61. Defendants' conduct complained of herein was willful and in disregard of Plaintiff's protected rights. Defendants and their supervisory personnel were aware that discrimination on the basis of Plaintiff's disability was unlawful but acted in reckless disregard of the law.

62. At all times material hereto, the employees exhibiting discriminatory conduct towards Plaintiff possessed the authority to affect the terms, conditions, and privileges of Plaintiff's employment with the Defendants.

63. Defendants retained all employees who exhibited discriminatory conduct toward the Plaintiff and did so despite the knowledge of said employees engaging in discriminatory actions.

64. As a result of Defendants' actions, as alleged herein, Plaintiff has been deprived of rights, has been exposed to ridicule and embarrassment, and has suffered emotional distress and damage.

65. The conduct of Defendants, by and through the conduct of their agents, employees, and/or representatives, and the Defendants' failure to make prompt remedial action to prevent continued discrimination against the Plaintiff, deprived the Plaintiff of statutory rights under state and/or federal law.

66. The actions of the Defendants and/or their agents were willful, wanton, and intentional, and with malice or reckless indifference to the Plaintiff's statutorily protected rights, thus entitling Plaintiff to damages in the form of compensatory and punitive damages pursuant to state and/or federal law, to punish the Defendants for its actions and to deter it, and others, from such action in the future.

67. Plaintiff has suffered and will continue to suffer both irreparable injury and compensable damages as a result of Defendants' discriminatory practices unless and until this Honorable Court grants relief.

**WHEREFORE**, Plaintiff respectfully prays for the following relief against Defendants:

- A. Adjudge and decree that Defendants have violated the ADA, and has done so willfully, intentionally, and with reckless disregard for Plaintiff's rights;
  - B. Enter a judgment requiring that Defendants pay Plaintiff appropriate back pay, benefits' adjustment, and at amounts to be proved at trial for the unlawful employment practices described herein;
  - C. Enter an award against Defendants and award Plaintiff compensatory damages for mental anguish, personal suffering, and loss of enjoyment of life;
  - D. Require Defendants to reinstate Plaintiff to the position at the rate of pay and with the full benefits Plaintiff would have had Plaintiff not been discriminated against by Defendants, or in lieu of reinstatement, award front pay;
  - E. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees; and
- Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

**COUNT V**  
***Retaliation Under the FMLA***

68. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1-28 above as if set out in full herein.

69. Plaintiff is an individual entitled to protection under the FMLA.

70. Plaintiff is an employee of Defendant within the meaning of the FMLA.

71. Plaintiff and/or an individual closely associated with Plaintiff engaged in protected activity within the meaning of the FMLA.

72. Defendant retaliated against Plaintiff for exercising rights protected under the FMLA.

73. Defendant's actions constitute a violation of the FMLA.

74. As a result of Defendant's unlawful conduct, Plaintiff has suffered and continues to suffer damages.

**WHEREFORE**, Plaintiff respectfully prays for the following relief against Defendant:

- a. Adjudge and decree that Defendant has violated the FMLA and has done so willfully, intentionally and with reckless disregard for Plaintiff's rights;
  - b. Enter a judgment requiring that Defendant pay Plaintiff appropriate back pay, front pay, benefits' adjustment, and prejudgment interest at amounts to be proved at trial for the unlawful employment practices described herein;
  - c. Enter an award against Defendant and award Plaintiff compensatory damages for mental anguish, personal suffering, and loss of enjoyment of life;
  - d. Require Defendant to reinstate Plaintiff to her position at the rate of pay and with the full benefits she would have, had she not been discriminated against by Defendant, or in lieu of reinstatement, award her front pay;
  - e. Award Plaintiff the costs of this action, together with a reasonable attorney fees; and
- Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

### **JURY DEMAND**

Plaintiff demands trial by jury of all issues triable as of right by jury.

Dated: \_\_\_\_\_1/9/23\_\_\_\_\_

Respectfully submitted,

*s/ Elvis J. Adan*

Elvis J. Adan, Esq.

Fla. Bar No.: 24223

GALLARDO LAW OFFICE, P.A.

8492 SW 8<sup>th</sup> Street

Miami, Florida 33144

Telephone: (305) 261-7000